

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF DENTON ALLOWING PROFEST, INC. TO SELL ALCOHOLIC BEVERAGES AT THE DENTON ARTS AND JAZZ FESTIVAL, ON FRIDAY, OCTOBER 7, FROM 3:00 P.M. TO 11:00 P.M., SATURDAY, OCTOBER 8, FROM 10:00 A.M. TO 11:00 P.M., AND SUNDAY, OCTOBER 9, 2022, FROM 11:00 A.M. TO 9:00 P.M., AT QUAKERTOWN PARK, UPON SATISFYING CERTAIN CONDITIONS; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN CONFORMITY WITH THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Denton Festival Foundation will host the Denton Arts and Jazz Festival on Friday, October 7, from 3:00 P.M. to 11:00 P.M., Saturday, October 8, from 10:00 A.M. to 11:00 P.M., and Sunday, October 9, 2022, from 11:00 A.M. to 9:00 P.M., at Quakertown Park in Denton, Texas to showcase professional and amateur musicians, artists, and performers; and

WHEREAS, Profest, Inc. has requested that they be allowed to sell alcoholic beverages at the Denton Arts and Jazz Festival; and

WHEREAS, the City Council deems it in the public interest to authorize the City Manager, or designee, to allow Profest, Inc. to sell alcoholic beverages at the Denton Arts and Jazz Festival on Friday, October 7, through Sunday, October 9, 2022, so long as certain conditions are met by Profest, Inc. and the Denton Festival Foundation; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. The findings set forth in the preamble of this Resolution are incorporated by reference herein.

SECTION 2. Profest, Inc. shall be allowed to sell alcoholic beverages at the Denton Arts and Jazz Festival, on Friday, October 7. from 3:00 P.M. to 11:00 p.m., Saturday, October 8, from 10:00 A.M. to 11:00 P.M., and Sunday, October 9, 2022, from 11:00 A.M. to 9:00 P.M. at Quakertown Park, Denton, Texas, upon entering into and complying with the attached agreement with the City of Denton and satisfying the following conditions:

1. PROFEST, INC. shall be responsible for securing the space needed to sell alcoholic beverages at Quakertown Park.
2. PROFEST, INC. shall abide by all laws, resolutions, rules, and regulations, and will be responsible for obtaining the temporary license and permit required to sell alcoholic beverages at Quakertown Park.
3. PROFEST, INC shall furnish Liquor (Dram shop) Liability Insurance in the amount of \$1,000,000 per occurrence and agrees to indemnify the City against any liability incident(s) related the sale of alcoholic beverages.

- 4. DENTON FESTIVAL FOUNDATION will provide Comprehensive General Liability Insurance in the amount of \$1,000,000 per occurrence and agrees to indemnify the City against any liability incident(s) related to the event and the sale of alcoholic beverages.
- 5. DENTON FESTIVAL FOUNDATION shall provide the security necessary for the sale of alcoholic beverages.

SECTION 3. The City Manager, or designee, is authorized to execute an agreement in conformity with this Resolution, which shall be substantially in the form of the agreement attached hereto and made a part hereof by reference.

SECTION 4. This Resolution shall become effective immediately upon its passage and approval.

The motion to approve this Resolution was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This Resolution was passed and approved by the following vote [ \_ - \_ ]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse L. Davis, District 3:	_____	_____	_____	_____
Alison Maguire, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

A handwritten signature in blue ink, appearing to read "Amanda Ryan", is positioned above a horizontal line.

BY: \_\_\_\_\_

**CITY OF DENTON AGREEMENT WITH  
DENTON FESTIVAL FOUNDATION  
AND PROFEST, INC.**

STATE OF TEXAS           §

COUNTY OF DENTON       §

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Denton, a Texas home-rule municipal corporation, hereinafter referred to as the "CITY", and PROFEST, INC. and DENTON FESTIVAL FOUNDATION.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**ARTICLE 1  
GENERAL**

The City grants to PROFEST, INC. the privilege to sell alcoholic beverages for the DENTON FESTIVAL FOUNDATION. subject to the exceptions and conditions hereinafter set forth, at the DENTON ARTS AND JAZZ FESTIVAL on Friday, October 7, from 3:00 p.m. to 11:00 p.m., Saturday, October 8. from 10:00 a.m. to 11:00 p.m., and Sunday, October 9. 2022. from 11:00 a.m. to 9:00 p.m., to be held at Quakertown Park. Denton, Texas. This privilege does not extend beyond said date and time.

**ARTICLE 2  
TERMS AND CONDITIONS**

PROFEST, INC. and DENTON FESTIVAL FOUNDATION shall comply with this agreement and perform the following in order to exercise the privilege to sell alcoholic beverages at Quakertown Park for the DENTON ARTS AND JAZZ FESTIVAL:

- A. PROFEST, INC. shall be responsible for securing the space needed to sell alcoholic beverages at Quakertown Park.
- B. PROFEST, INC. shall be responsible for obtaining the temporary license and permit required to sell alcoholic beverages at Quakertown Park for the DENTON ARTS AND JAZZ FESTIVAL.
- C. DENTON FESTIVAL FOUNDATION shall provide the security necessary for the sale of alcoholic beverages as predetermined and outlined in the Quakertown Park rental agreement.
- D. DENTON FESTIVAL FOUNDATION and PROFEST, INC. shall waive their right to exercise the privilege to sell alcoholic beverages at Quakertown Park for the DENTON

ARTS AND JAZZ FESTIVAL, if one or both respective parties fails to comply with any portion of this agreement including but not limited to, failing to provide proof of compliance prior to the event.

### **ARTICLE 3 LOCAL RULES AND REGULATION**

PROFEST, INC. and DENTON FESTIVAL FOUNDATION agree to abide by all municipal, county, state, and federal laws, resolutions, rules, and regulations and specifically, without limitation, to obtain all necessary and proper licenses, permits, and authorizations, and to comply with the requirements of any duly authorized person acting in connection therewith. PROFEST, INC. shall pay all taxes, if any, of every nature and description arising out of or in any manner connected with the sale of alcoholic beverages.

PROFEST, INC. will exercise reasonable care and due diligence in the sale of alcoholic beverages at the DENTON ARTS AND JAZZ FESTIVAL.

### **ARTICLE 4 INDEMNITY AGREEMENT**

PROFEST, INC., and DENTON FESTIVAL FOUNDATION shall indemnify and save and hold harmless the CITY and its officers, agents, and employees from and against any and all liability, claims, demands, losses, and expenses, including but not limited to, court costs and reasonable attorney fees incurred by the CITY, and including, without limitation, damages for bodily and personal injury, death, and property damage, resulting from the negligent acts or omissions of DENTON FESTIVAL FOUNDATION, PROFEST, INC., or their officers, shareholders, agents, or employees in the execution, operation, or performance of this Agreement.

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

### **ARTICLE 5 INSURANCE**

During the performance of this Agreement, PROFEST, INC. and DENTON FESTIVAL FOUNDATION shall maintain the following insurance with an insurance company licensed to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A-or above:

- A. DENTON FESTIVAL FOUNDATION shall provide and maintain Comprehensive General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.

- B. PROFEST, INC. shall provide and maintain Liquor (Dram shop) Liability Insurance in the amount of \$1,000,000 per occurrence for the DENTON ARTS AND JAZZ FESTIVAL at Quakertown Park where alcohol will be provided or served.
- C. PROFEST, INC. and DENTON FESTIVAL FOUNDATION shall furnish insurance certificates or insurance policies to the CITY as evidence of such coverages. The insurance policies shall name the CITY as an additional insured on all such policies and shall contain a provision that such insurance shall not be canceled or modified without written notice to the CITY. In such event, the policy holder, DENTON FESTIVAL FOUNDATION, and/or PROFEST, INC. shall, prior to the effective date of the change or cancellation, serve substitute policies furnishing the same coverage.
- D. Said insurance policies are subject to review by the CITY and may be rejected at the CITY's sole discretion, for any reason, as long as the reason is communicated to the policy holder prior to the day of the event.

## **ARTICLE 6 NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the addresses shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

PROFEST, INC.  
Kevin Lechler  
319 Pennsylvania Drive  
Denton, Texas 76205

CITY OF DENTON:  
City Manager  
215 E. McKinney St.  
Denton, Texas 76201

DENTON FESTIVAL FOUNDATION  
Kevin Lechler, Executive Director  
P.O. Box 2104  
Denton, TX 76202

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

## **ARTICLE 7 ENTIRE AGREEMENT**

This Agreement, consisting of nine (9) pages and no exhibits, constitutes the complete and final expression of the agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers.

promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

## **ARTICLE 8 SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

## **ARTICLE 9 DISCRIMINATION PROHIBITED**

In performing the services required hereunder, PROFEST, INC. and DENTON FESTIVAL FOUNDATION shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

## **ARTICLE 10 PERSONNEL**

PROFEST, INC. and DENTON FESTIVAL FOUNDATION represents that they have or will secure, at their own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of or have any contractual relations with the CITY.

## **ARTICLE 11 ASSIGNABILITY**

PROFEST, INC. and DENTON FESTIVAL FOUNDATION shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the CITY.

## **ARTICLE 12 MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

**ARTICLE 13  
MISCELLANEOUS**

- A. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.
- B. The captions of this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

IN WITNESS HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager; and DENTON FESTIVAL FOUNDATION and PROFEST, TNC. has executed this Agreement through their duly authorized undersigned officers on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF DENTON, TEXAS

\_\_\_\_\_  
SARA HENSLEY,  
CITY MANAGER

ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_



DENTON FESTIVAL FOUNDATION

DocuSigned by:  
BY: Kevin Lechler  
CBF1B280FD8F435...  
KEVIN LECHLER, PROFEST INC.

DocuSigned by:  
BY: Kevin Lechler  
CBF1B280FD8F435...  
KEVIN LECHLER, EXECUTIVE DIRECTOR

WITNESS:

BY: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

DocuSigned by: <u>Gary Packan</u> AC6AE9E7A4264A9...	Gary Packan
SIGNATURE	PRINTED NAME

Director of Parks and Recreation  
\_\_\_\_\_  
TITLE

Parks & Recreation  
\_\_\_\_\_  
DEPARTMENT